

# HOUSE BILL No. 1027

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 35-33-8.

**Synopsis:** Bail and bail procedure. Provides that if a defendant was admitted to bail by depositing cash or securities in an amount not less than 10% of the bail and failed to appear as ordered, the court must declare the cash or securities and the remainder of the bail forfeited. Allows judgment to be withheld for 120 days. Provides that, if the cash or securities and the remainder of the bail have been forfeited or the 120 day period has expired, the court: (1) may not release the defendant on personal recognizance; (2) may not set bail for the rearrest of the defendant at an amount less than the original bail; and (3) may readmit the defendant to bail only under certain circumstances. Provides that, if a defendant executed a bail bond, deposited cash or securities in an amount equal to bail, or executed a bond secured by real estate and failed to appear as ordered, the court must issue a warrant for the defendant's arrest and declare the bail bond forfeited. Requires the clerk to mail notice of forfeiture to the defendant immediately. Provides that, unless the court finds that there was justification for the defendant's failure to appear within 120 days after the date the notice was mailed, the court must immediately enter judgment against the defendant for the amount of the bail the day after the 120 day period expires.

**Effective:** July 1, 2003.

**Smith V**

January 7, 2003, read first time and referred to Committee on Courts and Criminal Code.



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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

## HOUSE BILL No. 1027

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 35-33-8-7 IS AMENDED TO READ AS  
2       FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7. (a) If a defendant  
3       (+) was admitted to bail under section 3.2(a)(2) of this chapter  
4       and  
5       (2) has failed to appear before the court as ordered,  
6       the court shall issue a warrant for the defendant's arrest **and, except as**  
7       **provided in subsection (b), declare the cash or securities deposited**  
8       **and the remainder of the bail forfeited. Judgment on the cash or**  
9       **securities deposited and the remainder of the bail may be withheld**  
10      **for one hundred twenty (120) days. If the cash or securities**  
11      **deposited and the remainder of the bail have been forfeited or the**  
12      **one hundred twenty (120) day period has expired, the court:**  
13      (1) may not release the defendant on personal recognizance;  
14      (2) may not set bail for the rearrest of the defendant on the  
15      warrant at an amount that is less than the original bail; and  
16      (3) may readmit the defendant to bail only under section  
17      3.2(a)(1) of this chapter.



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(b) In a criminal case, if the court having jurisdiction over the criminal case receives written notice of a pending civil action or an unsatisfied judgment against the criminal defendant arising out of the same transaction or occurrence forming the basis of the criminal case, ~~funds the cash or securities~~ deposited with the clerk of the court under section 3.2(a)(2) of this chapter **and the remainder of the collected or uncollected bail amount** may not be declared forfeited by the court, and the court shall order the ~~cash or securities~~ deposited ~~funds and the remaining amount of the bail~~ to be held by the clerk. If there is an entry of final judgment in favor of the plaintiff in the civil action, and if the ~~deposit cash or securities deposited~~ and the ~~bond remaining amount of the bail~~ are subject to forfeiture, the criminal court shall order payment of all or any part of the ~~deposit cash or securities deposited and remaining amount of the bail~~ to the plaintiff in the action, as is necessary to satisfy the judgment. The court shall then order the remainder of the ~~deposit, cash or securities deposited~~, if any, and the ~~bond remaining amount of the bail~~ forfeited.

(c) Any proceedings concerning the **bail** bond or its forfeiture, judgment, or execution of judgment shall be held in the court that admitted the defendant to bail.

(d) After a ~~bond~~ **has the cash or securities deposited and the remaining amount of the bail** have been forfeited under subsection (a) or (b), the clerk shall **immediately** mail notice of forfeiture to the defendant. In addition, unless the court finds that there was justification for the defendant's failure to appear **within the one hundred twenty (120) day period under subsection (a)**, the court shall immediately enter judgment **the day after the one hundred twenty (120) day period expires**, without pleadings and without change of judge or change of venue, against the defendant for the amount of the bail, ~~bond~~, and the clerk shall:

(1) record the judgment; and

(2) **proceed with the collection of the judgment or request that the appropriate sheriff proceed with the collection.**

(e) If a ~~bond~~ **is the cash or securities deposited and the remaining amount of the bail** are forfeited and the court has entered a judgment under subsection (d), the clerk shall transfer to the state common school fund:

(1) any amount remaining on deposit with the court (less the **administrative** fees retained by the clerk); and

(2) any amount **of the remaining bail amount** collected in satisfaction of the judgment.



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(f) The clerk shall return a deposit, less the administrative fee, made under section 3.2(a)(2) of this chapter to the defendant if the defendant appeared at trial and the other critical stages of the legal proceedings.

SECTION 2. IC 35-33-8-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 8. (a) If a defendant was admitted to bail under section ~~3.2(a)~~ **3.2(a)(1)** of this chapter and the defendant has ~~knowingly and intentionally~~ failed to appear before the court as ordered, the court ~~(+)~~ shall issue a warrant for the defendant's arrest **and, except as provided in subsection (b), declare the bail bond forfeited. If the defendant was admitted to bail under section 3.2(a)(1)(B) or 3.2(a)(1)(C) of this chapter, judgment on the bail bond may be withheld for one hundred twenty (120) days. If the defendant was admitted to bail under section 3.2(a)(1)(A) of this chapter, judgment must be in accordance with IC 27-10-2-12. If the bail bond has been forfeited and judgment has been entered under subsection (c), the court:**

~~(2)~~ **(1)** may not release the defendant on personal recognizance; and

~~(3)~~ **(2)** may not set bail for the rearrest of the defendant on the warrant at an amount that is less than the greater of:

(A) the amount of the original bail; or

(B) two thousand five hundred dollars (\$2,500);

in the form of a bond issued by an entity defined in IC 27-10-1-7 or the full amount of the ~~bond~~ **bail** in cash.

(b) In a criminal case, if the court having jurisdiction over the criminal case receives written notice of a pending civil action or ~~an~~ unsatisfied judgment against the criminal defendant arising out of the same transaction or occurrence forming the basis of the criminal case, funds deposited with the clerk of the court under section ~~3.2(a)(2)~~ **3.2(a)(1)(B)** of this chapter may not be declared forfeited by the court, and the court shall order the deposited funds to be held by the clerk. If there is an entry of final judgment in favor of the plaintiff in the civil action, and if the deposit is subject to forfeiture, the criminal court shall order payment of all or any part of the deposit to the plaintiff in the action, as is necessary to satisfy the judgment. The court shall then order the remainder of the deposit, if any, forfeited.

(c) **After a bond has been forfeited under subsection (a) or (b), the clerk shall immediately mail notice of forfeiture to the defendant. In addition, unless the court finds that there was justification for the defendant's failure to appear within the one hundred twenty (120) day period after the date the notice was mailed, the court shall immediately enter judgment the day after**



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the one hundred twenty (120) day period expires, without pleadings and without change of judge or change of venue, against the defendant for the amount of the bail, and the clerk shall:

(1) record the judgment; and

(2) proceed with the collection of the judgment or request that the appropriate sheriff proceed with the collection.

(d) If a bond is forfeited and the court has entered a judgment under subsection (c), the clerk shall transfer to the state common school fund:

(1) any amount remaining on deposit with the court; and

(2) any amount collected in satisfaction of the judgment.

(e) If a defendant appeared at trial and other critical stages of the legal proceedings, the court shall order the clerk to:

(1) return any deposit made; or

(2) release any real estate used to secure the defendant's bail; under section 3.2(a)(1) of this chapter to the defendant or another person, if the person made the deposit or owns the real estate, not more than thirty (30) days after the date of the disposition of the charges against the defendant.

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